KA / BG-GPO/2515/WPP-47/2006-2008



ಕರ್ನಾಟಕ ರಾಜ್ಯಪತ್ರ

ಅಧಿಕೃತವಾಗಿ ಪ್ರಕಟಿಸಲಾದುದು

ಸಂಪುಟ ೧೪೨	ಬೆಂಗಳೂರು, ಗುರುವಾರ, ನವೆಂಬರ್ ೮, ೨೦೦೭ (ಕಾರ್ತೀಕ ೧೭, ಶಕ ವರ್ಷ ೧೯೨೯)	ಸಂಚಿಕೆ ೪೪

ಭಾಗ–೪

ಕೇಂದ್ರದ ವಿಧೇಯಕಗಳು ಮತ್ತು ಅವುಗಳ ಮೇಲೆ ಪರಿಶೀಲನಾ ಸಮಿತಿಯ ವರದಿಗಳು, ಕೇಂದ್ರದ ಅಧಿನಿಯಮಗಳು ಮತ್ತು ಅಧ್ಯಾದೇಶಗಳು, ಕೇಂದ್ರ ಸರ್ಕಾರದವರು ಹೊರಡಿಸಿದ ಸಾಮಾನ್ಯ ಶಾಸನಬದ್ಧ ನಿಯಮಗಳು ಮತ್ತು ಶಾಸನಬದ್ಧ ಆದೇಶಗಳು ಮತ್ತು ರಾಷ್ಟ್ರಪತಿಯವರಿಂದ ರಚಿತವಾಗಿ ರಾಜ್ಯ ಸರ್ಕಾರದವರಿಂದ ಪುನಃ ಪ್ರಕಟವಾದ ಆದೇಶಗಳು.

ELECTION COMMISSION OF INDIA

Nirvachan Sadan,
Ashoka Road
New Delhi-110001

NOTIFICATION

Dated the 22nd October, 2007
30 Asvina 1929 (Saka)

No 82./KT-LA/11/2004/2007: In pursuance of Section 106 of the Representation of the People Act, 1951, (43 of 1951) the Election Commission hereby publishes the order of the High Court of Karnataka, Bangalore dated the 05-09-2007 in Election Petition No. 11 of 2004.

By order
TAPAS KUMAR
Secretary
Election Commission of India.

IN THE HIGH COURT OF KARNATAKA AT BANGALORE
Dated: 05th day of September ,2007
Before
THE HON'BLE Mr. JUSTICE V. GOPALA GOWDA
ELECTION PETITION No. 11/2004

Between:
S. PRASANNA KUMAR
S/O D.K. SRINIVASAN
AGED 35 YEARS
OCC :ADVOCATE
R/O 1ST MAIN 10TH CROSS
H.S. EXTENSION, HARIHAR 577 601
DAVANAGERE DISTRICT

PETITIONER

(BY SRI Ko. CHENNABASAPPA-Sr-Adv for
SRI A. NAGARAJAPPA-ADV)
AND
1. Dr. Y. NAGAPPA
S/O Y BASAPPA
R/O NO 160 HOSPETE BEEDHI
HARIHAR 577 601
DIST : DAVANAGERE -

2) H SHIVAPPA
S/O H. THIPPANNA
R/O NO 144/A 5TH MAIN ROAD
HIGH SCHOOL EXTENSION
HARIHAR 577 601 DAVANAGERE DISTRICT
3) HARISH P BASAVANAGOUDA
S/O. P BASAVANAGOUDA
R/O NO 3893/2 13TH CROSS
TARALABALU EXTENSION, DAVANAGERE 577 004
4). H.N. GURU
R/O HOSPETE BEEDHI
HARIHAR 577 601 DAVANAGERE DISTRICT
5). A. MARULIASIDDAPPA
R/O NO 3891 1ST MAIN ROAD, 1ST CROSS,
VIDYANAGAR, DAVANAGERE DISTRICT-577604
6). M.G. VEERANAGOUDA
R/O HOLASIRIGERE POST
HARIHAR 577 601 DIST DAVANAGERE
7). JABIULLA
R/O OLD BARAMPURA
4TH MAIN ROAD 1ST CROSS
HARIHAR 577601 DAVANAGERE DISTRICT
8). H.G. NARENDRAPRAKASH
S/O LT. DHEERENDRA GOPAL
R/O RAGHAVENDRAKRUPA
5TH MAIN ROAD, 11TH CROSS J.C EXTENSION
HARIHAR 577 601, DAVANAGERE DISTRICT
9) THE RETURNING OFFICER
40 HARIHARA ASSEMBLY
CONSTITUENCY
DAVANAGERE DISTRICT
10) THE TAHSILDAR-CUM-
ASSISTANT RETURNING OFFICER
40 HARIHAR ASSEMBLY
CONSTITUENCY HARIHAR 577 601

RESPONDENTS

(BY SRI H. KANTHRAJA-ADV FOR R1
SRI S.N. HATTI-ADV FOR R2
SMT S. SUJATHA-ADV FOR R4
SRI C. SHIVAKUMAR-ADV FOR R5
SRI P.H. VIRUPAKSAIAH-ADV FOR R8
SRI EASSKAY ASSOCIATES-ADV FOR R7
R-3, 6 ARE PLACED EXPARTE
Late SRI P.G.C. CHENGAPPA-AGA FOR R-9 & 10)

This E.P. is filed under Sections 81 and 83 of Representation of Peoples Act praying to declare the election of R-1 as void, to order for re-count of votes etc.,

This E.P. coming on for pronouncement of order before the Court this day the court pronounced the following:

ORDER

This Election Petition is filed by the Election Agent of 2nd respondent with the following prayers:

‘‘(a) accept this Petition for trial;

(b) declare the election of the 1st respondent, the returned candidate as void on the ground of having committed an electoral offence/corrupt practice under Section 123(4) of the Act making false statement of facts concerning personal character of the 2nd respondent;

(c) that the election of the 1st respondent be declared as void as there is fraudulent manipulation of votes polled by the returned candidate by non-compliance of the provisions of the Act and the Rules framed under the Act within meening of Sec. 100/(1) (d) of the Act;

(d) order recount of the votes of all the candidates and declare the 2nd respondent as having been duly elected to fill the seat from 40 Harihar Assembly Constituency;

(e) name the 1st respondent his election agent and such other persons as are found guilty of committing corrupt practice in furtherance to prejudies the prospects of 2nd respondent's election and disqualify them from voting and contesting elections;

(f) award cost of these proceedings;

(g) and grant such other suitable reliefs as this Hon'ble court deems fit to grant, in the circumstances of the case, in the interest of justice and equity''.

2. The relevant brief facts of the case are mentioned as under:

i) The petitioner is a voter and Election Agent of 2nd respondent. Election to No. 40 Harihar Assembly Constituency of Karnataka State Legislative Assembly was held on 20.4.2004 under the provisions of Representation of Peoples Act (hereinafter referred to as the Act) and the Conduct of Election Rules, 1961 (hereinafter referred to as the Rules) In the said election the 2nd respondent H. Shivappa contested as a candidate of Janata Dal (S) Political Party. The petitioner here in was appointed by him as his Election Agent under Rule 12(1) of the Rules. In the said election in all there were 8 contestants from different political parties. Among them, the first respondent Dr. Y. Nagappa was from Indian National Congress party. The 3rd respondent contested from Bharathiya Janatha Party. Respondents 4 to 8 contested from other political parties and some of them were Independent candidates.

ii) Voting right was exercised by the Electorate in Electronic machines. Counting of Ballot took place on 13-5-2004 between 8-00 am to 12-00 noon in at Davanagere Town. The counting of Ballots was conducted by 9th respondent Returning Officer assisted by 10th respondent Asst. Returning Officer. At about 4 –30 p.m the results have been announced in the prescribed form and the first respondent was declared elected. The margin of votes between respondents 1 and 2 was 569.

iii) The case of the petitioner is that, after declaration of the results, he filed an application as per Ex-P-4 for recounting of votes. In that application he pointed-out that in Polling Station No. 106 there were only 54 women voters but in the counting list it is mentioned that 61 women have exercised franchise; that in Polling Station 137 in all 843 voters exercised franchise but only 743 votes were counted; that in Kumbalu Polling Station 139, 688 voters exercised franchise but only 711 votes were counted; that in Polling Station 155, 782 voters exercised franchise but only 778 votes had been counted. Similarly, there are several discrepancies and errors occurred at the time of counting. In this regard, the 3rd respondent also submitted an application to the Returning Officer pointing-out certain discrepancies in the counting of votes and sought re-counting of the ballots on the ground that the total number of ballots from the polling stations does not tally with the total number of votes entered in Form 17-C Part-I. It is alleged that the Returning Officer did not pass any order. Under Rule 63 of the Rules, after completion of counting ballots, the Returning officer shall record in the result sheet Form-20 the total number votes polled for each candidate and announce the same. The Returning Officer should have recorded the results of the counting in Form-20 and immediately should have announced the results. But, Form-20 has not been recorded and results were not announced immediately is the allegation made by the petitioner in the election petition The election results were declared at about 4-30 pm on 13/05/2004.

iv) The petitioner alleged that immediately after closure of the counting rounds at about 12.00 noon, the Returning Officer and his staff retired to the chamber and returned only at 4-30 p.m. to declare the results of Assembly election. It is stated that the petitioner also filed another application seeking to furnish him the result of counting of 17 tables in respect of 179 Polling Station the particulars of which were entered in Form 17-C, Part-II, Even on the said application also no order was passed nor furnished the details of counting. However an endorsement was served at 6-00 pm on 14/5/2004 stating some untenable reasons and lame excuses regarding the discrepancies pointed out by the petitioner in the application for re-counting. It is the case of the petitioner that his request for furnishing the certified copies of Form-17-C both Part-I and II was not complied with but only Form-20 copy was furnished on 15/5/2004.

v) On receipt of the certified copy of Form-20, the petitioner found further discrepancies regarding the number of votes polled and counted. Therefore, he filed another application on 15/5/2004 pointing out other discrepancies. He also submitted an application to furnish him the voters turn-out list in Form A-05 and Form 17-C Part-II. The glaring discrepancies pointed-out by him to the Returning Officer are that the total voting turn-over in the constituency was 1,22,036 but only 1,21,208 votes are counted including the postal ballots as per Form 20. The discrepancies pointed-out are in respect of Polling Station Nos. 54,64,72,78,86,110,116,120 and 121. Endorsement to that application was given by the Returning Officer

only on 19/5/2004 in which the total turn-out of votes was as stated above and there would be difference of 828 votes. The explanation given by him was, this discrepancy was due to slip of the hand. It is stated by the petitioner that the figures furnished by the Returning Officer in the endorsement amounts to admitting the discrepancies pointed-out by him. Further, a comparison of the figures tabulated in Form 17-C Parts I and II with the Result Sheet in Form 20 (is absolutely necessary) which do not tally with each other Otherwise, it is not possible to determine the correctness of the counting of ballots. The figures tabulated in Form 17-C Part I and Part II, at the end of the counting has to be compared. It is alleged that the Returning Officer refused to furnish the same despite he submitted an application as far back as on 15/5/2004. An endorsement in this regard was given on 29/5/2004 stating that the same cannot be furnished as per the Rules as it is meant only for office purpose. The petitioner has further alleged that he filed W.P.No.22118/2004 before this court seeking for issuance of a Writ of Mandamus to the Returning Officer and A.R.O for furnishing certified copies of Form-17C Part-I and Part-II, in which this Court has issued a direction to the R.O. & A.R.O. to furnish copies of Form 17-C Parts I and II on or before 17/6/2004. It was directed to file an Affidavit for having complied with the said direction. Thereafter he approached the RO to obtain the copies. Despite specific order of this Court, he furnished only Part II of Form 17-C. Thereafter he filed another application to furnish Part-I of Form-17C.

vi) After copy of Part II of Form 17-C was furnished, the petitioner examined the documents pertaining to seven Counting Tables. The name and signature of the counting agents of 2nd respondent was not to be found in almost all the places. However, the counting agents of first respondent have put their signatures on Form 17-C Part-II. Therefore, it is clear indication that the said documents have been meddled with and got-up by respondents No.9 and 10 after counting. It is further stated that the entry in Part II, Form 17-C does not tally with the entry in Form 20 in respect of Polling Station No.12. To substantiate the same the petitioner has pointed out that 7th respondent is shown has having secured zero votes but in Form-20 it is shown that 15 votes have been polled for him. It is stated that number of such discrepancies are found in the documents furnished by the Returning Officer.

vii) It is further alleged that respondents 9 and 10 have deliberately, with a malafide intention withheld the public documents in not furnishing the same to the petitioner for which he is legally entitled to, which action of them is contrary to Rule-93 of the Rules and despite a specific direction issued by this Court as they have been hand-in-glove with the 1st respondent in the manipulation of counting of votes, the certified copies of Form-17C Part-I was not furnished to the petitioner. Therefore they have been impleaded as respondents in this petition to answer the allegation of malafides made against them. Petitioner also furnished voters turnout report in the Assembly segment and according to him there is a difference of voters turnover in polling booth No.94 in respect of which it is shown that 864 persons have exercised their franchise. In document No.16 it is shown as 1639. The difference is 775. Such discrepancies in the votes polled as per turnout and the votes mentioned in Form-20 in different polling stations in extracted hereunder:

Polling Station No.	Votes Polled as per Voters turn Out	Votes counted as Per Form No.20
54	718	723
64	678	530
72	777	807
78	958	955
86	984	974
94	1639	839
95	839	864
110	1073	1133
116	697	692
120	745	744
148	768	641
149	641	768
151	462	461
163	539	559

Having regard to the admission of mistakes by R.O and A.R.O in maintaining the documents, in the press-report published on 14/5/2004 total number of votes exercised is shown as 1,74,732 and votes polled is 1,19,612. Votes polled in favour of 1st respondent is 40,306 and for the 2nd respondent 39,799. The said

figures do not tally with Form-17-C, Part-II and the voter's turnout list. The Hindu and English Daily News Paper Edition dt.14/5/2004 at page 11 have given the voting statistics of all constituencies in Karnataka State. The figures in relation to the constituency in question, the missing votes are shown as 1111. Therefore it is stated that 2nd respondent secured large number of votes than the 1st respondent and the result is declared in his favour. The explanation offered by R.O is, it was by inadvertence slip of hand. There is deliberate intention of falsification of the votes polled and counted. The alleged error is not by slip of hand as stated by R.9 and R.10 but with a malafide intention on their part with a view to help the 1st respondent.

viii) Petitioner has stated that immediately after the counting of votes was over around 12.00 noon, under Rule-66 of the Rules the result ought to have been declared. He has further stated that the R.O and A.R.O retired to the chamber at 12.00 noon and came out only at 4.30 p.m and declared the results. This conduct on their part proves the allegation regarding non-furnishing of Form-17-C Part-I despite the direction issued by this Court. It is pleaded that in the interest of justice and to determine the will of the voters there should be re-counting.

ix) In the middle of voting by EVMS, secrecy of ballot does not arise at all because the ballot papers are not put into ballot boxes. The EVMS records to whom the votes are polled, no body can ascertain as to who has voted to which candidate. Therefore law regarding secrecy of ballot has no relevance now.

x) Corrupt practice is also alleged against 1st respondent by the petitioner, as, false statements attacking personal character of the 2nd respondent was made by one Mr.Shankar Kataukar when the election office of the 1st respondent was inaugurated at Harihar Town on 7/4/2004, in which meeting the 1st respondent, his Election Agent and other party members of Congress Party were present. While speaking in the said meeting the said Shankar Kataukar who was the Ex.President and Member of the CMC, Harihara and a supporter of Congress party made certain false statements against second respondent in relation to the character of the 2nd respondent which is in violation of Election Law U/s sc.123 of the Act. In that regard the petitioner arranged for video recording of the public meeting proceedings through R.K Video. Mr.Shankar Kataukar forcibly snatched the video camera from the videographer. He has complained in this regard by filing a complaint with the Returning Officer. In response to the complaint the Circle Inspector was directed to take suitable action. He has stated in his evidence that Mr.Shankar Kataukar was summoned and video camera was restored to the videographer, but the cassette in which the proceedings of the public meeting was recorded was not at all handed over. The said cassette contained defamatory and false statements to the effect that the 2nd respondent defalcated the funds of Badra Sugar Factory to the tune of Rs.3 crores and he has not paid the salaries to the employees of the factory and he has swindled the money of farmers who supplied sugarcane to the sugar factory for crushing. According to the petitioner the defamatory wild allegation made against second respondent by the supporter of first respondent with his consent has prejudiced the prospects of the 2nd respondent and it is a clear case of corrupt practice within the meaning of section 123(4) of the Act, which was practiced by the first respondent. Similar such false statements were made against second respondent throughout the Town openly to the knowledge of 1st respondent and his election agent.

3. The 1st respondent resisted the Election Petition by filling objections denying the allegations made in the petition and traversed the averrments regarding discrepancies and prayed to dismiss the Election Petition. Respondents 3 and 6 are placed ex-parte. Respondents 4,5,7 and 8 neither filed written statement nor led evidence. Respondents 9 and 10 have filed their objection statement denying the petition averments and the allegations made against them and have prayed for dismissal of the election petition.

4. On the basis of the pleadings this Court has framed the following issues for its determination:

1. Whether the petitioner proves the discrepancies mentioned in Paragraphs 5, 8, 12 and 13 of the Election Petition?
2. Does the petitioners further prove as alleged in Paras 10, 11, 12 and 13 then provision of Sec.64 of R.P. Act R/w. Rules 56C/57C counting and regarding maintenance of voting records and furnishing of copies thereof were violated by the Returning Officer and Asst.Returning Officer and the counting staff, with a view to favour the returned candidate?

3. Does the Petitioner further proves that on a scrutiny and comparison of the presiding officers diary in Form No.17C Part 1 and the counting Supervisors account in Part II of Form 17C in respect of Polling stations Nos.4, 66, 134, 159 and 164, 3119 invalid votes are recorded and counted from Electronic Voting Machines not supplied to the Polling Station out of which, the returned candidate is credited with 1563 votes, which have to be deducted from 40,366 and only 38,803 are valid votes polled by Respondent No.1 ?
4. Does the petitioner prove that election results were declared at 4.30 p.m. on 13.5.2004 ?
5. Whether the petitioner proves that respondents 9 and 10 are hand in glove with respondent no.1 and have deliberately withheld the public documents with mala fide intention, as pleaded in para 12 ?
6. Whether the petitioner proves the corrupt practices alleged against the first respondent as pleaded in paragraph 15 of the Election Petition ?
7. What order ?

Additional Issue framed on 1/4/2005

Whether the petitioner is entitled to an order of recounting of the votes in respect of the election held on 20.4.2004, to 40 - Harihar Assembly Constituency as sought in prayer (d) of the election petition?

5. The petitioner examined himself as PW-1 and other 12 witnesses as PWs 2 to 13 and got marked documents Exs.P-1 to P-91. On behalf of respondents six witnesses were examined including first respondent as RWs-1 to 6 and got marked Ex.R-1 to R-10.

6. Heard the learned counsel for the parties at length and perused the original files.

7. The petitioner filed this election petition mainly on two grounds viz., corrupt practices and discrepancies in counting of votes. I will first take Issue No.1 pertaining to discrepancies mentioned in paragraphs 5, 8, 12 and 13 of the petition, which are mentioned at paragraph 2 (vii) in this judgement while narrating the brief facts of the case. At the out-set, no discrepancy is mentioned in paragraph 12 of the petition. In the said paragraph allegations are made against respondents 9 and 10 and they are in relation to Issue No.5 and does not relate to Issue No.1. The same will be dealt with while answering Issue No.5.

8. The first discrepancy pointed-out by the petitioner in paragraph 5 of the petition is that, even though there were only 54 women have exercised their franchise in the Polling Station No.106, in the counting it is mentioned as 61 women. This is clear from the Voter Turnout Report at Page 38 of ECI Form ID A05-C (Ex.P-23). The second discrepancy pointed-out is that, in Polling Station No.137 in all 843 votes had been casted but only 743 votes are counted. This is clear from page 40 of Form A05-C(Ex.P-23) Third discrepancy pointed-out is, in Polling Station No. 139, 688 (correct figure is 698) voters have exercised franchise as is evident from Page 40 itself but 711 votes have been distributed, but on verification it was found that 798 votes have been distributed. Thus there is a difference of 100 votes (votes distributed 798-votes polled 698) taken by the Returning Officer is incorrect. Another discrepancy pointed-out is, in Polling Station No.155, 782 voters have exercised their franchise but only 778 votes had been counted in the counting.

9. In paragraphs 8 and 13 of the petition, the petitioner has furnished the discrepancies between the votes polled as per Voters Turnover out and number of votes polled as recorded in Form No.20 and the same is as under.

Polling Station No.	**Votes Polled as per Voters turn Out (Ex.P-15)**	**Votes counted as Per Form No.20 (Ex.P.19)**
54	718	723
64	678	530
72	777	807
78	958	955
86	984	974
94	1639	839
95	839	864
110	1073	1133
116	697	692
120	745	744

Polling Station No.	Votes Polled as per Voters turn Out (Ex.P-15)	Votes counted as Per Form No.20 (Ex.P.19)
148	768	641
149	641	768
151	462	461
163	539	559
	TOTAL - 11,518	**0690 Difference-828**

The aforementioned figures have been compared and found correct. From the above, it is seen that the total number of votes polled is 11,518 but what is actually recorded in Form-20 is 10,690 and the difference is 828. This is what precisely the petitioner has mentioned in paragraph 13 of the petition. In respect of certain discrepancies, the Returning Officer has issued endorsement dated 19/5/2004 which is produced as Document No.9 alongwith the Election Petition admitting that as per the voters statistics the total number of votes polled are 1,22,036 is shown but in Form-20 the votes polled are mentioned as 1,21,208 resulting in difference of 828 votes and therefore the result announced by the Returning Officer is defective. In this connection in the endorsement issued by the Returning Officer to the petitioner it is stated that after verification of the documents in polling station No.94 there is a total voters of 1076, after the election was over as per the Diary submitted by the Presiding Officer it is mentioned that 430 male and 409 female voters exercised their franchise but in the statistics list it is stated by R9 by slip of hand it is mentioned as 830 male and 809 female, it is stated by him that in polling station No.94 in all 839 votes only are casted. Including the postal ballots totally 1,21,465 votes are casted. According to the Returning Officer, the said mistake has occurred due to slip of hand is the statement of oath made in his affidavit evidence. The difference of votes pointed-out above cannot be by a mistake by slip of hand as stated by the Returning Officer.

10. Now, coming to the evidence of 9th respondent Returning Officer, who is examined as RW-4. In his evidence Affidavit, at paragraphs 9, 10, 13, 15 and 20 he has sworn to facts which are very much necessary to be extracted in this judgement to appreciate and record a finding on the above contentious issue:-

9. I hereby deny the averrments made in para-8 of the petition. I further state that there are no discrepancies in the votes recorded in the turn out Form No.A-05 and the counted votes recorded in Form-No.20 in respect of Polling Station Nos.54, 64, 72, 78, 84, 94, 95, 110, 116, 120, 151 & 163.

10 I Further state that on verification of the Presiding Officer's diary i.e, the votes recorded in the Presiding Officer's diary and votes counted and recorded in Form No.20 tallied and there were no discrepancies./

13. I hereby deny the averments made in para-11 of the petition. The total number of votes counted are correct and on verification, it was found tallying. Hence, there are no discrepancies in number of votes polled and the number of votes counted.

15. I hereby deny the averments made in para-13 of the petition. I state that there are no material irregularities in the votes recorded in Form No.A-05 and in Form No.20. The mistakes which are highlighted by the petitioner are only clerical mistakes and I state that overall there are no discrepancies in the counting of votes.

(Underlined by the Court)

20. I further state that there are no discrepancies in counting process and I have conducted the elections to No.40, Harihar Legislative Assembly Constituency in accordance with the election rules. I have conducted elections in a most fair and lawful manner and I followed all the procedures as prescribed in the election manual. Hence there are no discrepancies in conducting the elections.

In the voters Turn Out Report at page 227 the actual votes polled are Males-556, Females-517, total-1073 but the total is wrongly mentioned as 1133.

11. In the cross-examination of RW-4 the Returning Officer, at page 124 of the paper book furnished by the petitioner it is elicited as under:-

"I now see the authenticated copy of A05-C Voters Turn-out Report of Harihar Constituency. This is the continuation to Ex.P-15. The same is marked as Ex.P-15(a). As per this document, the total turnover of votes is 1,22,035. I sec Ex.P-14 which contains Voters Statistics Statement. Witness volunteers that the particulars mentioned therein are correct but the same was not authentically published either

by me or the ARO. The total number of votes polled is entered as 1,21,208 in Ex.P-19 and it is excluding the postal ballots received by me in respect of Legislative Assembly election"

12. To a specific question put to the witness regarding difference of 828 votes polled and counted as per Exs.P-15 and P-19, he has offered explanation as under:-

"Ans. This difference is due to the clerical mistake committed in my office in making the entries of total number of votes polled with reference to the polling station Nos.94 and 95. This is the major discrepancy regarding the total number of votes. I have explained the same in my Affidavit and the same is marked as Ex.R4."

13. In Annexure-R4, the difference of votes is admitted by the Returning Officer but it is sought to be justified by stating that the votes counted tallies with the Diaries of Presiding Officers.

14. It is to be noted that the number of votes polled should tally with the number of votes counted. It is not the case of the Returning Officer that the difference was on account of the votes polled and rejected. Since the votes polled and counted do not talley and there is difference, it has to be held that the same has upset the poll results.

15. In the further cross-examination at page 125 the Returning Officer has admitted that he noticed the discrepancy for the first time after the result were announced. In the light of the above categorical admission of this witness in his evidence, the justification sought to be made by him on the basis of Ex.R-4 is totally unacceptable as the same is unnatural and improbable to believe. Hence the explanation given by the Returning Officer is liable to be rejected and accordingly rejected.

16. It is also pertinent to note that the Returning Officer states in his evidence Affidavit of examination-in-chief that there are no discrepancies in the counting of ballots of Legislative Assembly Constituency No.40 of Harihar. He also justifies the counting of ballots by stating that the votes counted tallies with the diaries of Presiding Officers. But, admittedly he has not at all secured the diaries of all the Presiding Officers of all polling booths. This is clear from the cross-examination portion of his evidence at page 125 and the same is extracted hereunder:-

"..............I cannot tell how many Presiding Officers had not submitted their Diaries to me. The ARO gave endorsement to the petitioner that Form 17-C part-1 were not furnished by 34 Presiding Officers. It is true that in Ex.P.62 endorsement issued to the petitioner by ARO that diaries of 7 presiding Officers are not furnished."

17. When he himself stated that he cannot tell how many Presiding Officers had not submitted their diaries, one can imagine how he has performed his duties as the Returning Officer and how far true is his statement which is extracted in the earlier paragraph of this order that there is no discrepancy regarding total number of votes polled and counted. It is significant to note that at page 122 of his deposition he has admitted as under:-

"I know the procedure of conducting elections as Returning Officer for Legislative Assembly. I am aware of Rule 93(2) of Conduct of Election Rules."

18. When he is aware of the procedure of conducting elections as Returning Officer for Legislative Assembly, why he has allowed the aforementioned lapses to occur, is a serious matter to be taken note of by this Court to record a finding on the above relevant contentious issues.

19. Now, let me examine the evidence of 10th respondent Sri B.B. Kittur, the Asst.Returning Officer who is examined as RW-5.

20. At paragraph 4 of his evidence Affidavit he has stated as under:-

"4. The voting figures of Form-14 (Presiding Officer Diary) have been taken into consideration at the time of counting of votes where Form No.17C Part-I were not made available by the Polling Officers during the time of demustering, in respect of polling Station No. 6, 10, 15, 18, 25, 26, 28, 30, 34, 35, 57, 79, 98, 110, 126, 133, 137, 138 & 178. The remaining Polling Stations bearing No.2. 7 & 106 were both the Form No.14 and 17C Part-I were not made available by the Polling Officers, only Form-A05(Voting Statistics) has been considered,........."

(Emphasis is made by this Court)

While the Returning Officer stated that he noticed this, when he opened the sealed cover, RW-5 in his cross-examination, at page 136 has stated as under:-

"The above said fact came to my knowledge only when the counting supervisors opened sealed cover handed over by the PO of the abovesaid polling stations. At

that time it was noticed that they submitted blank form No.14 copies. Ex.P28, 30, 31, 33, 35, 37 in respect of Polling Station Nos.66, 136, 159, 134, 4 and 164 respectively are certified copies were furnished to the petitioner by me."

21. From the above, it is clear that blank Form No.14 were submitted in respect of the aforementioned polling stations. Despite this, the Returning Officer defends in his evidence Affidavit that the figures tally with Presiding Officers Diaries and in proof of the same he has produced Ex.R-1 along-with the affidavit.

22. In view of the discrepancies noticed above from the documentary and oral evidence of RW-4 and RW-5, Issue No.1 is answered in the affirmative holding that the petitioner has proved the discrepancies mentioned in paragraphs 5, 8 and 13 of the Election Petition. As already noticed, paragraph 12 does not relate to discrepancies.

23. Now, I will take-up Issue Nos.2 and 5 together. They relate to the allegations made in paragraphs 10, 11, 12 and 13 of the petition pertaining to non-furnishing of records/public documents to the petitioner with a deliberate and malafide intention to favour the elected candidate first respondent and respondents 9 and 10 were hand-in-glove with him.

24. As per the petition averments in paragraph 10, the petitioner filed application on 15/5/2004 requesting respondent No.9 to furnish the certified copies of Form 17C Part I and II. But an endorsement as per Ex.P-9 dated 29/5/2004 was given to the petitioner stating that they are meant only for office use and as per Rules the same cannot be furnished. Therefore, the petitioner filed W.P.No.22118/2004 before this court and this Court has directed respondents 9 and 10 to furnish the certified copies Parts I and II of Form 17-C to the petitioner and to file an affidavit to that effect. Despite such direction, the petitioner was furnished with only Part-II of Form 17-C. Thereafter , he filed another application requesting the Returning Officer to furnish Part-I Form 17C and also pointed out the non-obeyance of this Court direction in the above Writ Petition. However, an endorsement as per Ex.P-13 dated 23.6.2004 was issued stating that since Part-I of Form 17-C is kept in safety room and therefore it is not possible to furnish the same to the petitioner. In paragraph 12 of the petition it is stated that respondents 9 and 10 persistently, deliberately and with malafide intention withheld the above public documents inspite of specific direction issued by this Court which action of respondent No.9 is contrary to Rule 93 of the Rules. It is further stated that since respondents 9 and 10 are hand-in-glove with first respondent, they have been impleaded as party respondents in this petition to answer the allegations made against them, as they are proper and necessary parties to this petition.

25. In the statement of objections filed on behalf of respondents 9 and 10 the petition averments are admitted in paragraph 9 of the statement of objections. It is stated by them that since Form 17-C Part-I was kept in Strong Room, the same was got opened on 30/6/2004 and copies were issued to the petitioner on 1/7/2004. In paragraph 11 it is stated that there was no malafide intention on their part to withhold the above public documents from the petitioner as alleged against them in the petition.

26. The petitioner has adduced evidence reiterating what is pleaded in the petition. In the cross-examination of RW-4 (Respondent-9) the Returning Officer at page 123 of the paper book, he has admitted that as per Rule 93(2) of the Rules furnishing the certified copies of Part-I of Form 17-C is permissible. Despite that, the same was not issued to the petitioner and the reasons assigned in the endorsements given to him in pursuant to his applications submitted to respondent No.9 demanding the above certified copies of documents of Form-17C Part-I are different. It is noticed that respondents 9 and 10 have not taken any steps to issue the certified copies of parts I and II of Form 17-C to the petitioner when he has demanded to furnish which are relevant and important documents despite requests made to respondent No.9, even after this Court has directed to him and A.R.O in the above Writ Petition filed by the petitioner to furnish the certified copies, Only Part-II of Form 17-C was furnished to him. Part-I of Form-17C was furnished to the petitioner after a long lapse of time that too on the repeated requests made by him. While the reasons assigned in the endorsement at Ex.P-9 is that the same is meant only for office use and there is no provision in the rules to furnish it, in the endorsement Ex.P-13 the reason mentioned is, since it is kept in strong room it is not possible to furnish the same. Thus, it is clear that respondents 9 and 10 with a malafide intention have deliberately avoided furnishing the certified copies of Part-I of Form 17-C of the polling stations of Legislative Assembly Constituency to the petitioner on one or the other pretext, which conduct of the above respondents is very relevant for this court to record its findings on the above contentious issues.

27. I have perused Ex.P-79 to P-85. In Ex.P-79 and Ex.P-80 signatures of none of the polling agents is obtained. In Ex.P-81, P-83, P-84 and P-85 signatures of only three polling agents are taken. On Ex.P-82 signatures of 5 polling agents are obtained. As per Rule-56-C(2)(b) obtaining signatures of counting supervisors and also by the candidates or their agents or counting agents present in Form 17C Part-II is mandatory. The said Rule reads thus:-

> "2(b), Part-II of Form-17C completed in other respects and signed by the counting supervisor and also by the candidate or their election agents or their counting agents present; and.."

I have perused Form-17C Part-II at page 499 of the original file the signatures of Dr.Y.Nagappa or his agent is not obtained except Sri.H.Shivappa and Sri.M.G.Veeranagouda signatures of other contesting candidates or their agents are not obtained. So also at page 492, 493 of the original file. At page 472 of the original file except the polling agents of Sri.Harish.P.Basavanagouda and Sri.M.G.Veerana Gouda the signatures of other candidates or their agents are not obtained by the Returning Officer. At page 471 except Sri.M.G.Veeranagouda the signatures of other candidates and their agents are not obtained. At page 437 also the position is the same. Even in several forms of Part-II the signatures of either the candidates or their agents or counting agents are not at all obtained. This is a serious lapse on the part of the Returning Officer or A.R.O. The same has to be viewed very seriously in the background of serious allegations made by the petitioner in this petition with regard to tampering of the above documents.

28. In paragraph 11 the petitioner has averred that the names and signatures of counting agents of 2nd respondents is not to be found in part-II of Form 17C relating to 7 tables. The counting agents of first respondent have affixed their signatures. It is alleged by the petitioner that Part-II of Form 17-C have been meddled with and they are all got-up documents by respondents No.9 and 10 after the counting was completed. It is further stated that the entries-- in Part-II of Form 17C do not tally with the entry in Form 20, the entries made regarding number of votes secured by each one of the candidate which must be prepared on the basis of entries made in the Part-II of Form-17C regarding total number of votes counted at the time of counting made by the Returning Officer.

29. In the cross-examination of RW-4 the Returning Officer, he has categorically stated that he cannot tell how many Presiding Officers had not submitted their diaries either to him or A.R.O, after polling was over and that the ARO gave endorsement to the petitioner that Form 17-C Part-I were not furnished by 24 Presiding Officers. He also admitted that in the Endorsement Ex.P-62 it is mentioned that diaries of 7 Presiding Officers are not furnished. Now, coming to the evidence of RW-5, at paragraph 4 of his evidence Affidavit that the Form 17-C Part-1 which were kept in the Strong Room of Taluk Sub-Treasury were obtained on 30-6-2004. and issued to the petitioner on 1-7-2004 But, in the cross-examination dated 27-1-2006 he has stated that he signed the certified copies of the same (Exs.P-79 to P-85) on 29/6/2004 and they were ready on that day. He further stated that in the Affidavit he has stated that the Strong Room was opened on 30/6/2004. If the Strong Room was opened on 30/6/2004, how he could sign the certified copies one-day earlier on 29/6/2004 is the crucial aspect which is required to be taken note of very seriously. He also stated that Exs.P-79 to P-85 were kept ready on 29/6/2004 on the basis of duplicate forms furnished by the Presiding Officers. According to him, Exs.P-79 and Ex.P-38 are one and the same. In this connection, the evidence of RW-5 at page 139 of deposition from paper book is to the following effect:-

> "It is true that I gave the certified copies of Form 17-C Part-I now shown to me The same are marked as Ex.P-79 to 85. They were all signed by me on 29/6/2004. All these Copies were ready on 29/6/2004. Again I say that the dates are not written by me but by the election case worker Shivanna Huligennanavar. He has come to the Court today at my instance. I filed my counter Affidavit in the contempt case on 2/6/2005. In my counter Affidavit I have stated that "the strong room was opened on 30/6/2004 and I got available Form 17-C Part-I from the Treasury and immediately on receipt of the same I have issued to the certified copy". Exs.P-79 to P-85 were kept ready on 29/6/2004 on the basis of duplicate Forms 17-C Part-I furnished by the Presiding Officers. According to me, Ex.P38 and P-79 are one and the same."

30. It is interesting to note that Exs.P-38, P-79 and P-85 are Form 17-C Part-I of Polling Station No.164. Exs.P79 and P-85 are one and the same. But, Ex.P-38 is different. On a comparison of Exs.P-38 and P-79, I noticed the following discrepancies in Ex.P-38:-

(a) The name of Polling Station is mentioned in Kannada in Ex.P-38 whereas it is mentioned in English in Ex.P-79;

(b) In Clause (b) of Sl.No.8 the colour mentioned in the brackets are (ಕೆಂಪು ಬಿಳಿ) in Ex.P-38 and in Ex.P-79 it is written as (ತಿಳಿ ಕೆಂಪು);
(c) At Sl.No.9 the figure is mentioned as 10AA351403 in Exs.P-79 wherein in Ex.P-38 it is mentioned as 10AA851403.
(d) In Ex.P-38 only the Presiding Officer's signature is found whereas in Ex.P-79 along with the signature date is put as 20-4-2007.
(e) In Ex.P-38 there is no over-writing in Clause (c) but there is over-writing in Ex.P-86, which is marked as Exs.P-86(a).
(f) The place Malebennur is differently written in both the documents.
(g) The signature of the Presiding Officer differs in both.

31. It is thus clear that Ex.P-38 is altogether a different document and therefore it cannot be the certified copy of Ex.P79. As per the evidence of Rw-5, Ex.P-79 is the reduced size of Ex.P-38. If that is so, how the above discrepancies occured in respect of the same document is not explained either by R-9 or R-10.

32. From the above, it is clear that what has been issued and produced are not same Form 17-C Part-I. It is manifest that two sets of Part-I of Form-17C are maintained. In this regard, it is very much necessary to look into the evidence of RW-5. In his cross-examination dated 27-1-2006 (at page 141) he has deposed as under:-

> "The original of Form-17C Part-I of Polling Station No.4 of Harihar Assembly constituency is not available in the original file produced by the Returning Officer. Witness volunteers that he has stated in his affidavit evidence that the originals of Form 17C Part-I are not available in respect of polling stations mentioned therein. Presiding Officers of some of the Polling Stations of Harihar Assembly constituency have not submitted them.

It is the clear admission of RW-5 that original of Form 17-C Part-I are not available in the original records produced by the Returning Officer. If original is not to be in the file, what happened to it and where it has gone is not at all stated by the Returning Officer? The above serious discrepancies pointed out from the above documents which are very important is sufficient to hold that there is tampering of documents by respondents 9 and 10 in order to help the successful candidate, the first respondent herein. RW-5 has again stated that Exs.P-85 was furnished by the petitioner from the duplicate copy furnished by the polling Officer and the said duplicate is available in the original file, which is marked as Ex.P-90. It is in his cross-examination that both he and the Returning Officer did not issue notices to the Presiding Officers who have not submitted the originals of Form 17-C Part-I. Lastly, RW-5 stated that he has requested the Government to file Review Petition regarding non-furnishing of the same and the Government granted permission.

33. On verification of the original documents from the file, it is shocking for me to note that Form 17-C part-I is not available in respect of the following polling stations:-

Sl. No.		Polling Station No.		Name of Polling Station
01	-	02	-	Sarathy-1
02	-	06	-	Hotigenahalli
03	-	10	-	Kondajji-2
04	-	15	-	Guttur-3
05	-	18	-	Gutter-6
06	-	25	-	Harihar Town
07	-	26	-	Harihar Town
08	-	28	-	Harihar Town
09	-	30	-	Harihar Town
10	-	34	-	Harihar Town
11	-	35	-	Harihar Town
12	-	44	-	Harihar Town
13	-	46	-	Harihar Town
14	-	57	-	Harihar Town
15	-	79	-	Nagenahalli
16	-	98	-	Damalapur
17	-	106	-	Byaladahalli

Sl. No.		Polling Station No.		Name of Polling Station
18	-	110	-	K.Bevinahalli
19	-	126	-	Nandi Tavare-1
20	-	133	-	Devara Bellikere-2
21	-	137	-	Nittur-1
22	-	138	-	Nittur-2
23	-	178	-	Kumaranahalli

RW-5 has admitted in the cross examination at page 141 as under:-

"The original of Form-17C Part-I of Polling Station No.4 of Harihar Assembly constituency is not available in the original file produced by the Returning Officer. Witness volunteres that he has stated in his Affidavit evidence that the originals of Form-17C Part-I are not available in respect of polling stations mentioned therein. Presiding Officers of some of the Polling Stations of Harihar Assembly constituency have not submitted them.".

34. In the evidence Affidavit RW-5 has stated in paragraph 4 (at page 129) as under:-

"As Form No.14, in respect of Pollings Station Nos.2, 4, 7, 66, 106, 112, 121, 134, 136, 147, 159, 163, 164 were not made available by the Polling Officers at the time of demustering, an Endorsement in this behalf was issued to the petitioner on 20/9/2004. Where the Presiding Officers of 14 polling stations have not submitted the diaries at the time of demustering, the voting figures of Form 17C Part-I (Ballot Paper Account) have been taken into consideration at the time of counting of votes."

35. From what has been observed above, it is crystal clear that both Respondents 9 and 10 either not performed their election duties properly or deliberately failed to obtain original Form-17-C Part-I from the Presiding Officers or having obtained the same, they have meddled with the same. This has been done deliberately to help the successful candidate with a mala fide intention. Both of them have gone to the extent of declaring the elections according to their whims and fancy on their own cooked-up documents. The result of the Legislative Assembly constituency of Harihar was not announced on genuine documents which are required to be maintained in the normal course.

36. What is elicited in the cross-examination of RWs 4 and 5, is not mentioned in the Statement of objections filed on behalf of respondents 9 and 10. At paragraph 12 of the objections statement, they justified by stating that the votes recorded in Form No.20 tallies with votes recorded in Presiding Officers Diary. But, they do not tally with the figures mentioned in Voters Turnout-(A-05). Both must tally with each other. That is not the factual position in the instant case. That apart, on careful verification and scrutiny of the records very meticulously it is seen that Voters Turnout List is not available in respect of Polling Station No.95 Holesirigere. In paragraph 15 of the evidence Affidavit of R-4, he has stated that the mistakes highlighted by the petitioner are only clerical mistakes. In the endorsement issued to the petitioner the discrepancies crept in is by slip of hand. Whatever it may be, one thing is clear and certain that respondents 9 and 10 have not maintained the records properly, which is the mandatory duty under the provisions of the Act, Rules and in law. Failure to obtain diaries of some Presiding Officers by respondent Nos.9 and 10, the plea put forward by them that the Strong Room was opened on 30-6-2004 for furnishing Form 17-C Part-I and the same were ready and signed by the 10th respondent on 29-6-2004 etc., are all clear indications that there is something fishy in the conduct of election by them. All these things must have been done by them in collusion with the first respondent with a view to help him and declare him as elected in the election which is illegal and therefore the same cannot be allowed to sustain.

37. Taking into consideration the aforementioned factors, I hold that petitioner has proved Issue Nos.2 and 5.

38. I will take-up Issue No.3 for consideration This relates to 3119 invalid votes counted from voting machines not supplied in respect of polling Station Nos. 4, 66, 134, 136, 159 and 164 out of which 1563 votes credited to the returned candidate which have to be deducted from the votes 40,366 votes secured by first respondent.

39. At the out-set, it is noticed that there is no pleading at all on the above aspects. Since there is no pleading, respondents 9 and 10 have not traversed the same in their statement of objections. In the

absence of pleadings, evidence adduced in this regard cannot be considered and consequently I hold that consideration of this issue does not arise. I answer the same accordingly.

40. The next issue is Issue No.4. It relates to the time of declaration of election result. According to the petitioner, the result of the election was announced at 4-30 pm on 13/5/2004. But according to respondents 1, 9 and 10, the result was announced at 2-30 pm and not at 4-30 p.m. Both parties adduced evidence in support of their respective case. In my opinion, since Issue No. 1,2 and 5 are answered in favour of the petitioner, it makes no difference whether the result was announced at 2-30 pm or 4-30 p.m. Therefore, there is no necessity to go into that aspect of the matter, Accordingly, I answer Issue No.4.

41. Now, I will take-up Issue No.6 pertaining to corrupt practices alleged against the first respondent, In paragraph 15 of the petition the petitioner has alleged that on 7/4/2004 the election office of first respondent was inaugurated at Harihar town; that in the meeting held in front of Vijaya Bank false statement of facts regarding the character of 2nd respondent was made by Mr.Shankar Kataukar in the presence of first respondent; that the petitioner arranged to videograph the same but the video camera was snatched away by Mr.Shankar Kataukar and that the petitioner filed a complaint in this regard before the Returning Officer. According to the petitioner, serious defarmatory/false statements are made against the 2nd respondent H.Shivappa stating that he had defalcated funds of Bhadra Sugar factory to the tune of three crores; that he had not paid the salary to the employees and that he had swindled the money of farmers who had supplied sugarcane to the factory for crushing. These statements, according to the petitioner, amounts to corrupt practice within the meaning of Section 123(4) of the Act. In the evidence Affidavit the petitioner has reiterated the same at paragraphs 15 and 16.

42. A careful reading of petition averments reveal that the first respondent has not made the statements against 2nd respondent. It was Mr.Shankar Kataukar who has said to have made the defamatory statements against the second respondent. The same is evident from the following:-

> "15.The meeting was held in front of Vijaya Bank on Shimoga Road and at the said meeting, one Sri Shankar Kataukar, a sitting member of the City Municipal Council, Harihar and ex-President of the same corporation, and a supporter of Congress Party, while speaking at the said meeting was making false statements of facts regarding the character of 2nd respondent.

43. The petitioner has not examined the videographer of R.K.Video. In the cross-examination he has admitted that neither he nor the 2nd respondent took legal action against Shankar Kataukar for having made the false allegations against second respondent. At page 34 of his deposition, the petitioner has stated that he came to know about the allegations of Shankar Kataukar at about 9-00 or 9-30 pm on 7-4-2004. At that time he was in the election office of 2nd respondent. He had voluntered in evidence that Manju Sound System was entrusted and they brought the videograher to videographe the public meeting proceedings held on 7/4/2004 on behalf of the first respondent. From this evidence, one can easily understand whether it is possible for anybody to secure a videographer immediately. The said statement of evidence of PW-1 regarding momentus arrangement of videographer through Manju Sound System to cover the above said meeting speeches is unbelievable as the facts narrated are not natural and probable to believe, Except the bare statement and allegations made in the petition against the first respondent, supportive documentary evidence is not produced by the petitioner to prove the allegations regarding the false defamatory statements that were made against 2nd respondent in the said meeting by Mr.Shankar Kataukar, who is the strong supporter of first respondent.

44. The petitioner has examined another witness Mr.Shekarappa as P.W-11. In the cross-examination he has admitted that prior to the speech of Mr.Shankar Kataukar, Mr.Shamanur Shivashankarappa, Mr.Krishnasa, Mr.Shivappa, Rev Annasa, Mr.Ramachandra Kalal also addressed the gathering in the election propoganda public meeting. Even assuming for the sake of arguments that the public meeting was commenced exactly at 9.00 p.m. on 7.4.2004, the usual formalities such as prayer, welcome speech and the speeches of aforementioned persons might have went beyond 10-00 pm. Thereafter only the speech of Mr.Shankar Kataukar might have been made. In that circumstance it is very difficult to believe that P.W-1 has arranged a video coverage of the public meeting proceedings. PW-11 categorically admitted that the election materials of 2nd respondent were got printed in his press. Therefore, quite naturally he has supported the case of the petitioner. He being an interested witness it is not safe to accept his evidence and record a finding on a serious charge of corrupt practice alleged to have been practiced by the first respondent against second respondent.

45. Another witness Mr.D.Ujjesh was examined by the petitioner as PW-12. He has stated in his affidavit by way of evidence in examination-in-chief that he was present in the public propaganda meeting held on 7/4/2004 on behalf of the first respondent. He has also spoken about Mr.Shankar Kataukar making allegations against the second respondent and the allegation of snatching away of video camera from the videographer. In the cross-examination he has admitted that he does not know the name of the videographer who has covered the programme and the name of the person who inaugurated the public meeting. He also admitted that he is the friend of the petitioner. Being friend of the petitioner, he has deposed in favour of the petitioner to support his case and he also being an interested witness, his evidence cannot be countenanced by me to record a finding on the serious charge of corrupt practice against first respondent.

46. PW-13 Abdulsa Gore, the Circle Inspector of Police is examined as corroborative witness to prove the allegations that Mr.Shankar Kataukar has snatched away the video camera from the videographer who was covering the public meeting programme. He has deposed that when he interrogated Mr.Shankar Kataukar on complaint submitted by P.W-1 regarding snatching away of the video camera and casette. In the cross-examination he has categorically stated that he has ascertained from him that the video casette was not snatched away by him from the videographer. When a specific question was put to him by the learned counsel for the petitioner to disclose the source of information regarding the incident he answered that he came to know about this confidentially. He also deposed that neither the Returning Officer nor the videographer have approached him nor complained about the incident. The witness being a public servant has spoken the truth with regard to the incident.

47. On over-all appreciation and assessment of evidence of the witnessess who are examined in the case by the petitioner, I found that the allegations regarding snatching away of video camera from the videographer and removal of cassette, allegations made against the 2nd respondent regarding siphoning off Bhadra Sugar factory funds, non-payment of salary to employees and to the sugar suppliers are not proved. No document worth proof are produced by the petitioner in this regard. Petitioner has utterly failed to prove the allegations pertaining to corrupt practice made against first respondent. Therefore, I hold Issue No.6 in the negative.

48. In so far as the Additional Issue whether petitioner is entitled to an order of recounting is concerned, my answer is in the affirmative. In respect of the additional issue pertaining to re-counting, it has to be held in favour of the petitioner. The difference in the votes polled and votes counted have upset the result of the Election. Therefore, it is proper to direct re-counting of ballots and to avoid fresh election. There are discrepancies in the total turnover of votes and the number of votes counted. The discrepancies are admitted but respondents justify the same by stating that it was due to slip of hand in endorsement issued to the petitioner and in the objections statement and in the evidence it is stated that it was due to clerical mistake of the staff. On verification of the documents, the difference in the votes polled and votes counted, as pointed out by the petitioner is correct which is clear from Ex.P15 and P19 mentioned at page Nos.20 and 21 of this order. Therefore, I am of the view that it is fit case for issuing direction to the Election Commissioner for recounting of ballots. Accordingly, the additional issue is answered in the affirmative, Re-counting is also ordered keeping in view the remaining tenure & the expenditure involved in re-election.

49. Mr.H.Kantharaj, learned counsel for the first respondent has made very serious efforts to justify the declaration of results in declaring the first respondent as elected candidate as M.L.A. of the constituency and he has also brought on record certain discrepancies in the evidence of petitioner. But in the light of the glaring mistakes pointed out above in the documents from the original file, his efforts have become futile for the aforesaid reasons recorded by me on the contentious issues.

50. The petitioner has made serious allegations against the Returning Officer and Assistant Returning Officer (R.9 and R-10) alleging that they are hand-in-glove with the first respondent in order to help him so that he got elected in the election. The same are denied by respondents No.9 and 10. The Legislative Assembly elections are being conducted by the Election Commission to elect the true representatives of their choice by the voters so that they can give good governance for five years. While conducting elections to Parliament and Legislative Assembly in the Country, the Returning officers and A.R.O's are shouldered with great responsibility. They have to see that the elections and counting are conducted freely, fairly, properly and impartially. To discharge such a noble and responsible duty they must have honesty and integrity of high order as the elected candidates will occupy important positions in the Parliament and Legislative Assembly, which are Constitutional Institutions. They shall not give room for favouritism either to any particular candidate or a political party. Any lapse on their part will result in

serious consequences and the intention and desire of the voters to elect their true representatives of their choice will be defeated and public interest will suffer. In the backdrop of this, I feel it necessary to make certain observations against respondent No.9 and 10.

51. From the serious lapses and irregularities noticed above by me from the original file and the documentary evidence on record it is clear that respondents No.9 and 10 were hand-in-glove with the first respondent and with a view to help him they have not maintained the records properly. Ex.P-38 furnished to the petitioner is altogether a different document from Exs.P-79 and P86, inspite of this Court's direction in the Writ Petition, Form-17C Part-II was not furnished to the petitioner. As already noticed the strong room in which Form-17C Part-II were kept, was opened only on 30/06/2004 but in the copies furnished the date is put as 29/06/2004, a day prior to opening of the strong room. This one example is sufficient to hold that two sets of documents had been maintained and there is tampering of documents. Despite all these, white lies have been stated both in the statement of objections and in the endorsements issued to the petitioner by respondents No.9 and 10.

52. In the light of what has been observed above, I direct the Disciplinary Authorities of these two officers to make an entry in their Service Registers regarding their lack of honesty and integrity. I also direct the Chief Electoral Officer to see that this kind of responsible duties are not entrusted to respondents No.9 and 10 in future and to entrust the task to the officers having high reputation and integrity.

53. For the foregoing reasons the Election Petition will have to be allowed under Section 100(1)(d) of Representation of People Act.

54. Issue No.7 is answered by ordering as follows:-

(i) The petition is allowed. It is hereby declared that the declaration made by the Returning Officer that first respondent is duly elected, is set-aside as the same is void. The Chief Electoral Officer is directed to appoint an Officer within ten days from the date of receipt of a copy of this order for the purpose of recounting. The Officer so appointed shall re-count the votes and declare the result afresh on the basis of actual votes polled including the postal ballots within a perio of One Month.

(ii) Respondents N.9 and 10 are saddled with costs of Rupees Fifteen Thousand and Rupees Ten Thousand respectively, payable to the petitioner.

(iii) The petitioner is entitled to cost of Rupees Fifteen Thousand payable by the First respondent.

(iv) The Registry is directed to hand-over the Original Files in a sealed cover to the Chief Electoral Officer with a copy of this order through the Learned Government Advocate under acknowledgement within two days from today.

(v) Copies of this order shall also be sent to the Heads of Departments in which respondents Nos.9 and 10 are working to make entries in their Service Registers as observed in the course of this order.

Sd-

P.R. 85 **Judge**

ELECTION COMMISSION OF INDIA
Nirvachan Sadan, Ashoka Road, New Delhi - 110 001

Dated the 22nd October, 2007
30 Asvina, 1929 (Saka)

NOTIFICATION

No. 82/KT-HP/08/2004/2007:- In pursuance of Section 106 of the Representation of the People Act, 1951, (43 of 1951) the Election Commission hereby publishes the order of the High Court of Karnataka, Bangalore dated the 08-06-2007 in Election Petition No. 08 of 2004.

TAPAS KUMAR
Secretary
Election Commission of India.

IN THE HIGH COURT OF KARNATAKA AT BANGALORE
DATED THIS THE 8TH DAY OF JUNE, 2007
BEFORE
THE HON'BLE MR. JUSTICE N.K.PATIL
ELECTION PETITION No.8 of 2004

BETWEEN

D S VEERAIAH S/O SIDDAIAH
58 Years, R/O No. 362, Saptagiri,
5th Cross, Jayanagar, Tekal Road, Kolar.

.........PETITIONER

(By Sri: D S VEERAIAH - PETITIONER - ABSENT)

AND :

1. K H MUNIYAPPA S/O LATE HANUMAPPA
56 Years, R/O Harohalli Near P.C.Extension, Kolar.
2. S L GANGADHARAPPA S/O LATE V.LAXMAPPA
Major, R/O No. 406, 1st Cross, 1st Block,
R.T. Nagar, Bangalore-560 032
3. BALAJI CHANNAIAH S/O LATE T. CHANNAIAH
45 Years, R/O 2nd Main Road,
Gandhinagara Kolar.
4. N SURESHA S/O NARAYANAPPA
30 Years, R/O Chattra Kodihalli,
Bengli Hosahalli Post, Kolar Taluk.
5. M RAVI KUMAR S/O MUNIYAPPA
Major, R/O Harohalli Near P.C. Extension Kolar Town.
6. SRINIVASA S/O OBALAPPA
30 Years, R/O Harohalli Near P.C.Extension,
Kolar Town.
7. B.N. SREENIVASAPPA S/O CHIKKANARAYANAPPA
35 Years, R/O Batlahalli
Aiyama Reddyhalli Post Chintamani Taluk.

.......RESPONDENTS

(By Sri B PAPPEGOWDA FOR R1;
SRI M.V. CHANDRASHEKAR REDDY, ADVOCATE FOR R3;
SRI R. NANJEGOWDA, ADVOCATE FOR R7,
R2, R4 AND R6 ARE SERVED AND UNREPRESENTED;)

THIS ELECTION PETITION IS FILED UNDER SECTION 81 OF THE REPRESENTATION OF PEOPLE'S ACT, 1951, PRAYING TO DECLARE THAT THE DECLARATION OF THE RESULT OF FIRST RESPONDENT TO NO.10, KOLAR (SC) PARLIAMENTARY CONSTITUENCY IS NULL AND VOID; TO DECLARE THAT THE FIRST RESPONDENT HAS COMMITTED THE CORRUPT PRACTICES UNDER SECTION 123(8) R/W SECTION 135A AND SECTION 100(1)(B) OF THE R.P. ACT, 1951; TO NAME THE FIRST RESPONDENT AS HAVING COMMITTED CORRUPT PRACTICES UNDER SECTION 98 OF THE REPRESENTATION OF PEOPLES ACT AND SUCH OTHER PERSONS WHO HAVE COMMITTED THE CORRUPT PRACTICE; TO DECLARE THAT THE PETITIONER HAS HAVING BEEN ELECTED TO THE NO.10 KOLAR (SC) PARLIAMENTARY CONSTITUENCY BY REASON OF THE PETITIONER HAVING SECURED THE MAXIMUM VALID VOTES BY EXCLUDING 42634 VOTES FROM THE TOTA VOTES SECURED BY THE FIRST RESPONDENT VIDE FORM 21E, ETC.

THIS ELECTION PETITION COMING ON FOR FURTHER ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

When this matter had come up for orders on 13th December 2006, in view of retirement of learned counsel appearing for petitioner, court notice was ordered to be issued to petitioner. Accordingly, office has issued the court notice to the petitioner on 4th January 2007. The said court notice has been received by the petitioner on 26th February 2007. The matter is thereafter posted for further orders today. Today, the petitioner, in spite of service of court notice, is not present before the Court nor has engaged the services of the counsel. It shown petitioner is not interested to persue the case nor is he diligent in prosecuting the case by engaging the services of the counsel. Hence, the election petition filed by petition is dismissed for non prosecution.

Sd-
Judge

P.R. 86